

APPENDIX C
to the Bond Sale Agreement

USE OF PROCEEDS CERTIFICATE [FOR NEW MONEY & CURRENT REFUNDING]

The \$_____ General Obligation School Bonds, Series 2006 (the “Bonds”) issued by [Name of Local Unit] (the “Issuer”) will be purchased by the Virginia Public School Authority (“VPSA”) from the proceeds of the VPSA's \$_____ School Financing Bonds (1997 Resolution), Series 2006 B (the “VPSA's Bonds”), pursuant to a Bond Sale Agreement dated as of the sale date of the VPSA’s Bonds. The proceeds of the Bonds will be used to acquire, construct and equip public school facilities owned and/or operated by the school board for the Issuer (the “School Board”). The Issuer and the School Board each recognize that certain facts, estimates and representations set forth in the Certificate as to Arbitrage executed by VPSA in connection with the issuance of the VPSA’s Bonds must be based on the representations and certifications of the Issuer and the School Board, upon which VPSA and Sidley Austin LLP, its bond counsel (“Bond Counsel”) rely, and that the exclusion from gross income for federal income tax purposes of the interest on the VPSA’s Bonds depends on the use of proceeds of the VPSA’s and the Issuer’s Bonds. Accordingly, the Issuer and the School Board hereby covenant that:

Section 1. Description of Project. The proceeds of the Bonds, including investment income thereon (“proceeds”), will be used to (i) finance (the “New Money Portion”) the acquisition, construction, and equipping of public school facilities of the Issuer (the “New Money Project”), and (ii) current refund (the “Refunding Portion”) the [name of Local Issuer’s obligations to be refunded] (the “Refunded Obligations”) the proceeds of which were used to finance the acquisition, construction, and equipping of public school facilities of the Issuer (the “Prior Project” and, together with the New Money Project, the “Project”). The proceeds of the Refunding Portion will be applied on [date] to pay the principal of [and interest on] the Refunded Obligations, which date is within ninety (90) days of the date of issue of the VPSA’s Bonds.

Section 2. Governmental Use of Proceeds. The Issuer and the School Board covenant the following with respect to the use of proceeds of the Bonds and the facilities financed and refinanced therewith:

(a) In General.

(i) Private Business Use. No more than ten percent (10%) of the proceeds of the Bonds or the Project (based on the greatest of: (A) the cost allocated on the basis of space occupied, (B) the fair market value, or (C) the actual cost of construction) has been or, so long as the Bonds are outstanding, will be, used in the aggregate for any activities that constitute a “Private Use” (as such term is defined below in subsection (d) of this Section 2).

(ii) Private Security or Payment. No more than ten percent (10%) of the principal of or interest on the Bonds, under the terms thereof or any underlying arrangement, has been, or, so long as the Bonds are outstanding, will be, directly or indirectly, (A) secured by any interest in (I) property used for a

Private Use or (II) payments in respect of such property or (B) derived from payments in respect of property used or to be used for a Private Use, whether or not such property is a part of the Project.

(b) No Disproportionate or Unrelated Use. With respect to private business use disproportionate to or not related to governmental use financed or refinanced with the proceeds of the Bonds, no more than five percent (5%) of the principal of or interest on such Bonds, under the terms thereof or any underlying arrangement, has been, or, so long as the Bonds are outstanding, will be, directly or indirectly, (x) secured by any interest in (I) property used for a Private Use or (II) payments in respect of such property or (y) derived from payments in respect of property used or to be used for a Private Use, whether or not such property is a part of the Project.

(c) No Private Loan Financing. No proceeds of the Bonds will be used to make or finance loans to any person other than to a state or local governmental unit.

(d) Definition of Private Use. For purposes of this Certificate, the term “Private Use” means any activity that constitutes a trade or business that is carried on by persons or entities other than state or local governmental entities. Any activity carried on by a person other than a natural person is treated as a trade or business. The leasing of property financed or refinanced with the proceeds of the Bonds or the access of a person other than a state or local governmental unit to property or services on a basis other than as a member of the general public shall constitute Private Use unless the Issuer obtains an opinion of Bond Counsel to the contrary. Use of property financed or refinanced with proceeds of the Bonds by any person, other than a state or local governmental unit, in its trade or business constitutes general public use only if the property is intended to be available and is in fact reasonably available for use on the same basis by natural persons not engaged in a trade or business (“General Public Use”).

In most cases Private Use will occur only if a nongovernmental person has a special legal entitlement to use the financed or refinanced property under an arrangement with the Issuer or the School Board. Such a special legal entitlement would include ownership or actual or beneficial use of the Project pursuant to a lease, management or incentive payment contract, output contract, research agreement or similar arrangement. In the case of property that is not available for General Public Use, Private Use may be established solely on the basis of a special economic benefit to one or more nongovernmental persons. In determining whether special economic benefit gives rise to Private Use, it is necessary to consider all of the facts and circumstances, including one or more of the following factors:

(i) whether the financed or refinanced property is functionally related or physically proximate to property used in the trade or business of a nongovernmental person;

(ii) whether only a small number of nongovernmental persons receive the economic benefit; and

(iii) whether the cost of the financed or refinanced property is treated as depreciable by the nongovernmental person.

As of the date hereof, no portion of the Project is leased (or will be so leased) by the Issuer or the School Board (or a related party or agent) to a person or entity other than a state or local governmental unit or to members of the general public for General Public Use.

(e) Management and Service Contracts. With respect to management and service contracts, the determination of whether a particular use constitutes Private Use under this Certificate shall be determined on the basis of applying Revenue Procedure 97-13, 1997-1 C. B. 632, as modified by Revenue Procedure 2001-39, 2001-2 C.B. 38 (collectively, “Revenue Procedure 97-13”). As of the date hereof, no portion of the proceeds derived from the sale of the Bonds is being used to finance or refinance property subject to contracts or other arrangements with persons or entities engaged in a trade or business (other than governmental units) that involve the management of property or the provision of services with respect to property financed or refinanced with proceeds of the Bonds that does not comply with the standards of Revenue Procedure 97-13.

For purposes of determining the nature of a Private Use, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. Consequently, an arrangement that is referred to as a management or service contract may nevertheless be treated as a lease. In determining whether a management contract is properly characterized as a lease, it is necessary to consider all of the facts and circumstances, including the following factors:

- (i) the degree of control over the property that is exercised by a nongovernmental person; and
- (ii) whether a nongovernmental person bears risk of loss of the financed or refinanced property.

Section 3. Time Test and Due Diligence Test. The Issuer or the School Board have incurred or will incur within 6 months of the date hereof substantial binding obligations, which are not subject to contingencies within the control of the Issuer or the School Board or a related party, to third parties to expend at least 5% of the net sale proceeds of the New Money Portion of the Bonds on the New Money Project. The Issuer and the School Board will proceed with due diligence to spend all of the proceeds of the New Money Portion of the Bonds within three years of the date hereof.

Section 4. Dispositions and Change in Use.

(a) No Sale or Disposition. The Issuer and the School Board expect to own and operate and do not expect to sell or otherwise dispose of the Project, or any component thereof, prior to the final maturity date of the VPSA’s Bonds (August 1, [20__]).

(b) No Change in Use. The Issuer and the School Board each represents, warrants and covenants that the facilities financed or refinanced with proceeds of the Bonds will be used for the governmental purpose of the Issuer and the School Board during the period of time the Bonds are outstanding, unless an opinion of Bond Counsel is received with respect to any proposed change in use of the Project.

Section 5. No Sinking or Pledged Funds. The Issuer and the School Board have not established and will not establish any funds or accounts that are reasonably expected to be used to pay debt service on the Bonds or that are pledged (including negative pledges) as collateral for the Bonds for which there is a reasonable assurance that amounts on deposit therein will be available to pay debt service on the Bonds if the Issuer encounters financial difficulty.

Section 6. No Replacement Proceeds.

(a) In General. No portion of the proceeds of the Bonds will be used as a substitute for other funds that prior to the Issuer's resolving to proceed with the issuance of the Bonds was used or is to be used to pay any cost of the Project or to refund the Refunded Obligations.

(b) Safe Harbor. In accordance with Section 1.148-1(c) of the Treasury Regulations regarding the safe harbor against the creation of "replacement proceeds", as of the date hereof, the weighted average maturity of the Bonds does not exceed 120% of the reasonably expected economic life of the Project financed or refinanced thereby.

Section 7. No Other Refunding. The proceeds of the Bonds will not be used to provide for the payment of any principal of or interest on any obligations of the Issuer, other than the Bonds or the Refunded Obligations, incurred in the exercise of its borrowing power.

Section 8. Composite Issue. There are no other obligations of the Issuer that have been, or will be (a) sold within 15 days of VPSA's Bonds, (b) sold pursuant to the same plan of financing together with the Bonds, and (c) paid out of substantially the same source of funds as the Bonds.

Section 9. No Federal Guarantee. The Issuer and the School Board shall not take or permit any action that would cause (a) the payment of principal of or interest on the Bonds to be guaranteed, directly or indirectly, in whole or in part by the United States or any agency or instrumentality thereof or (b) 5 percent or more of the proceeds of the Bonds to be (i) used in making loans the payment of principal of or interest on which is guaranteed in whole or in part by the United States or any agency or instrumentality thereof or (ii) invested directly or indirectly in federally insured deposits or accounts (except as permitted under Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code"), or the regulations promulgated thereunder). The Issuer and the School Board have not, and will not enter into, any (i) long-term service contract with any federal governmental agency, (ii) service contract with any federal governmental agency under terms that are materially different from the terms of any contracts with any persons other than federal government agencies, and (iii) lease of property to any federal government agency that would cause the Bonds to be considered "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 10. No Hedge Bonds. The Issuer and the School Board reasonably expect that all of the net sale proceeds of the New Money Portion of the Bonds will be used to pay the cost of the New Money Project within three years of the date hereof and the Issuer and the School Board reasonably expected that all of the net sale proceeds of the Refunded Obligations would be used to pay the cost of the Prior Project within three years of the date of issue of the Refunded

Obligations. Furthermore, not more than 50 percent of the proceeds of the Bonds will be, and not more than 50 percent of the proceeds of the Refunded Obligations was or will be, invested in Nonpurpose Investments (as such term is defined in Section 148(f)(6)(A) of the Code) having a substantially guaranteed yield for four years or more.

Section 11. No Overissuance. The total proceeds derived by the Issuer from the sale of the Bonds and anticipated investment earnings thereon do not exceed the total of the amounts necessary to finance the New Money Project and to refund the Refunded Obligations.

Section 12. Reimbursable Expenses. [A portion of the proceeds of the Refunded Obligations to be applied to the cost of the Prior Project was used to reimburse the Issuer for expenditures incurred with respect to the Prior Project in anticipation of the issuance of the Refunded Obligations.] [A portion of the proceeds of the Bonds to be applied to the cost of the New Money Project will be used to reimburse the Issuer for expenditures incurred with respect to the New Money Project in anticipation of the issuance of the Bonds]. The Issuer and the School Board represent the following with respect to [the costs of the Prior Project reimbursed from the proceeds of the Refunded Obligations] and [the costs of the New Money Project to be reimbursed from the proceeds of the Bonds].

(a) Official Intent. The total amount of reimbursed costs incurred by the Issuer with respect to the Project is not expected to exceed \$ _____. Such expenditures were paid, in the case of the Refunded Obligations, prior to the date of issue of the Refunded Obligations, and in the case of the Bonds, prior to the date hereof, but in either case no earlier than sixty (60) days prior to _____, ____, ____, which is the date the Issuer or the School Board adopted its “official intent” declaration (the “Official Intent Declaration”) in accordance with Section 1.150-2 of the Treasury Regulations. The Official Intent Declaration:

(i) was, on the date of its adoption, intended to constitute a written documentation on behalf of the Issuer that states that the Issuer reasonably expected to reimburse itself for such expenditures with the proceeds of a taxable or tax-exempt borrowing,

(ii) set forth a general description of the Project, and

(iii) stated the maximum principal amount of debt expected to be issued for the Project.

Neither the Issuer nor the School Board has taken any action subsequent to the expression of such intent that would contradict or otherwise be inconsistent with such intent.

(b) Reasonable Official Intent. As of the date of the Official Intent Declaration, the Issuer reasonably expected to reimburse such expenditures with the proceeds of a borrowing. The Issuer does not have a pattern of failing to reimburse expenditures for which an intention to reimburse such expenditures was declared and which were actually paid by the Issuer other than in circumstances that were unexpected and beyond the control of the Issuer.

(c) Reimbursement Period Requirement. The proceeds derived from the sale of the Refunded Obligations applied to reimburse the above-described expenditures were, and the proceeds derived from the sale of the Bonds to be applied to reimburse the above-described expenditures will be, so applied no later than the later of the date that is (i) eighteen (18) months after the date on which the expenditure being reimbursed was paid, or (ii) eighteen (18) months after the date on which the portion of the Project to which such expenditure relates was placed in service (within the meaning of Section 1.150-2 of the Treasury Regulations) or abandoned. The Issuer has not and shall not, however, use proceeds of the Refunded Obligations or the Bonds, respectively, to reimburse the above-described expenditures later than three (3) years after the date the original expenditure was paid.

(d) Reimbursable Expenditures. The expenditures that were reimbursed were, and the expenditures that are to be reimbursed are, either (i) capital expenditures (within the meaning of Section 1.150-1 (b) of the Treasury Regulations), (ii) costs of issuance, (iii) certain working capital expenditures for extraordinary, nonrecurring items that are not customarily payable from current revenues (within the meaning of Section 1.148-6 (d) (3) (ii) (B) of the Treasury Regulations), (iv) grants (within the meaning of Section 1.148-6 (d) (4) of the Treasury Regulations), or (v) qualified student loans, qualified mortgage loans or qualified veterans' mortgage loans (within the meaning of Section 1.150-1(b) of the Treasury Regulations). None of the expenditures that were or are to be reimbursed were incurred for day-to-day operating costs or similar working capital items.

No portion of the proceeds of the Refunded Obligations that was used to reimburse the Issuer for prior expenditures was used, and no portion of the proceeds of the Bonds that is being used to reimburse the Issuer for prior expenditures will be used, directly or indirectly, within one year of the date of a reimbursement allocation, in a manner that results in the creation of replacement proceeds (within the meaning of Section 1.148-1 of the Treasury Regulations), other than amounts deposited in a bona fide debt service fund.

(e) Anti-Abuse Rules. None of the proceeds of the Refunded Obligations were, and none of the proceeds of the Bonds are being, used in a manner that employs an abusive arbitrage device under Section 1.148-10 of the Treasury Regulations to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147 of the Code.

Section 13. Unexpended Proceeds of Refunded Obligations. As of the date hereof, all proceeds of the Refunded Obligations have been expended for the Prior Project [other than \$_____ (the "Unspent Proceeds").]

Section 14. Transferred Proceeds. On each date that proceeds of the Bonds are applied to discharge any of the outstanding principal of the Refunded Obligations (each, a "Transfer Date"), proceeds of the Refunded Obligations that are unexpended on such date will become transferred proceeds of the VPSA's Bonds (the "Transferred Proceeds"). The amount that becomes Transferred Proceeds on each Transfer Date shall be equal to the total unexpended

proceeds of the Refunded Obligations on such date multiplied by a fraction, (i) the numerator of which is equal to the principal amount of the Refunded Obligations discharged with proceeds of the Bonds on such date, and (ii) the denominator of which is equal to the total outstanding principal amount of the Refunded Obligations on the date immediately before the date of that discharge. [The Unspent Proceeds will become Transferred Proceeds of the Bonds on _____.] [All of the proceeds of the Refunded Obligations have been expended prior to the date hereof; therefore, there will be no Transferred Proceeds.]

Section 15. Temporary Period. The unexpended proceeds of the Refunded Obligations that become Transferred Proceeds may be invested at a yield in excess of the yield on the VPSA's Bonds for a period of three (3) years beginning on the date of issue of the Refunded Obligations (i.e., INSERT 3 YEAR DATE).]

Section 16. Purpose of the Refunded Obligations. The Refunded Obligations were issued as interim temporary financing for the Prior Project until the issuance of the Bonds which issue constitutes the permanent financing for the Project. The proceeds of the Refunded Obligations were used solely to finance the Prior Project [and costs of issuance of the Refunded Obligations] and there were no other obligations of the Issuer (a) sold within 15 days of the Refunded Obligations, (b) sold pursuant to the same plan of financing as the Refunded Obligations, and (c) paid out of substantially the same source of funds as the Refunded Obligations.

Section 17. Private Activity Covenants. The Issuer and the School Board each represents, warrants and covenants that it will take no action that would cause either the Bonds or the VPSA's Bonds to be private activity bonds within the meaning of Section 141(a) of the Code and that it will not fail to take any action that would prevent the VPSA's Bonds and the Bonds from being private activity bonds, within the meaning of Section 141(a) of the Code. Furthermore, the Issuer and the School Board have established reasonable procedures to ensure compliance with this covenant.

Section 18. Covenant as to Arbitrage. The Issuer and the School Board each represents, warrants and covenants that whether or not any of the Bonds remain outstanding, the money on deposit in any fund or account maintained in connection with the Bonds, whether or not such money was derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner that would cause the Bonds or the VPSA's Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the applicable regulations thereunder.

Section 19. Tax Covenant. The Issuer and the School Board each represents, warrants and covenants that it will not take any action which will, or fail to take any action which failure will, cause the interest on the Bonds or the VPSA's Bonds to become includable in the gross income of the owners of the Bonds or the VPSA's Bonds for federal income tax purposes pursuant to the provisions of the Code and the regulations promulgated thereunder in effect on the date of original issuance of the Bonds and the VPSA's Bonds.

Date:

[NAME OF LOCAL ISSUER]

By: _____
Name:
Title:

[NAME OF SCHOOL BOARD]

By: _____
Name:
Title: